

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE HEARTLAND PAYMENT SYSTEMS, INC. DATA SECURITY BREACH LITIGATION)))))	CIVIL ACTION NO. H-09-MD-02046
THIS DOCUMENT RELATES TO: FINANCIAL INSTITUTION TRACK ACTIONS))))	

**DEFENDANT HEARTLAND PAYMENT SYSTEMS, INC.'S UNOPPOSED
MOTION FOR LEAVE TO FILE SEALED EXHIBITS**

Defendant Heartland Payment Systems, Inc. ("Heartland") files this Unopposed Motion for Leave to File Sealed Exhibits in connection with its Memorandum of Law in Support of Its Motion to Dismiss the Master Complaint.

I. REQUEST TO SEAL

1. Heartland will file its Memorandum of Law in Support of Its Motion to Dismiss the Master Complaint on October 23, 2009, which will reference as exhibits certain agreements referred to in the Master Complaint.

2. Heartland accordingly requests leave to file these agreements under seal. The parties have not yet reached agreement on a Protective Order. However, Plaintiffs do not oppose this motion.

3. The agreements are the Merchant Processing Agreement between KeyBank National Association and Heartland; the Merchant Processing Agreement between Heartland Bank and Heartland; and Heartland's standard form of agreement between Heartland and its merchant clients. These documents are not public and contain Heartland's confidential business information, such as transaction fees, bank account numbers, and the specific terms and

conditions by which Heartland conducts its business. Heartland could be irreparably harmed if such confidential information is made available to the general public because Heartland's competitors would have improper access to Heartland's terms of business as well as transactions fees. Additionally, Heartland owes contractual duties to KeyBank and Heartland Bank to not disclose their confidential business information. Heartland's interest in maintaining the confidentiality of its business information is a specific, serious and substantial interest which clearly outweighs the general presumption of openness. Sealing these exhibits will have no adverse effect on general public health or safety. Heartland's standard form of agreement between Heartland with its merchant clients and the contracts between Heartland and KeyBank and Heartland Bank are of no immediate interest to the general public. Moreover, the request is narrowly tailored to cover only the documents for which good cause for filing under seal exists, and no less restrictive means than sealing the exhibits will adequately and effectively protect Heartland's interests.

4. Heartland requests pursuant to Southern District of Texas Administrative Procedures for Electronic Filing 6B(2) and 6E that the Court order that these documents be filed as sealed documents among the records of the Court for use in connection with Heartland's Memorandum of Law in Support of Its Motion to Dismiss the Master Complaint.

II. CONCLUSION AND REQUEST FOR RELIEF

For all the foregoing reasons, Heartland requests that the Court grant leave to file the exhibits under seal and grant Heartland all other further relief to which it is entitled.

Respectfully submitted,

/s/ Neal S. Manne

Neal S. Manne

State Bar No. 12937980

S.D. Adm. No. 10209

SUSMAN GODFREY L.L.P.

1000 Louisiana Street, Suite 5100

Houston, Texas 77002-5096

Telephone: (713) 651-9366

Fax: (713) 654-6666

nmanne@susmangodfrey.com

Attorney-in-Charge for Heartland Payment
Systems, Inc.

OF COUNSEL:

Erica W. Harris

State Bar No. 00797697

S.D. Adm. No. 20784

David M. Peterson

State Bar No. 24056123

S.D. Adm. No. 882360

SUSMAN GODFREY L.L.P.

1000 Louisiana Street, Suite 5100

Houston, Texas 77002-5096

Telephone: (713) 651-9366

Fax: (713) 654-6666

eharris@susmangodfrey.com

dpeterson@susmangodfrey.com

Harvey J. Wolkoff

Douglas H. Meal

Mark P. Szpak

Anne E. Johnson

ROPES & GRAY LLP

One International Place

Boston, MA 02110-2624

(617) 951-7000 (telephone)

(617) 951-7050 (facsimile)

harvey.wolkoff@ropesgray.com

douglas.meal@ropesgray.com

mark.szpak@ropesgray.com

anne.johnson@ropesgray.com

CERTIFICATE OF CONFERENCE

Counsel for Defendant has conferred with counsel for Plaintiffs on October 19, 2009 and counsel for Plaintiffs are unopposed as to the disposition of the matters raised in this motion.

/s/ Neal S. Manne
Neal S. Manne

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 22nd day of October, 2009 with a copy of this document via the Court's CM/ECF system per the Local Rules and a copy sent by overnight and/or e-mail to the following:

Michael A. Caddell
Caddell & Chapman
1331 Lamar, Suite 1070
Houston, TX 77010
mac@caddellchapman.com
Liaison Counsel

Richard L. Coffman
The Coffman Law Firm
505 Orleans St., Ste. 505
Beaumont, TX 77701
RC@cofflaw.com

Joseph G. Sauder
Chimicles & Tikellis LLP
361 W. Lancaster Ave.
Haverford, PA 19041
JGS@chimicles.com
Interim Co-Lead Counsel

/s/ Neal S. Manne
Neal S. Manne